



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 11, 91, and 111

[Docket No. FAA-2022-1546]

### Expunction Policy for Certain Civil Penalty Actions, Military Referrals, and Foreign Referrals

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Policy statement.

**SUMMARY:** The FAA will expunge records of civil penalty actions against individuals settled with no finding of violation, referrals of apparent violations by U.S. service members to the U.S. Armed Forces, and referrals of apparent violations by individual foreign certificate users to foreign aviation authorities.

**DATES:** This notification of enforcement policy is effective December 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Cole R. Milliard, Attorney, Enforcement Division, AGC-300, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3452; [Cole.Milliard@faa.gov](mailto:Cole.Milliard@faa.gov); or James Barry, Manager, Policy/Audit/Evaluation, AGC-300, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-8198; [James.Barry@faa.gov](mailto:James.Barry@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

In 1991, the FAA adopted a policy of expunging records of certain closed legal enforcement actions against individuals.<sup>1</sup> The policy provided for the expunction of certain legal enforcement action records for individuals who hold airman certificates and those who do not,

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<sup>1</sup> See FAA Enforcement Records; Expunction Policy, 56 FR 55788 (Oct. 29, 1991).

such as passengers. In 2011, the FAA suspended the expunction policy<sup>2</sup> based on the Airline Safety and Federal Aviation Administration Extension Act of 2010 (“Act”).<sup>3</sup> The Act amended the Pilot Records Improvement Act by requiring the FAA to create a pilot records database (“PRD”) for air carriers to use for pilot background checks. The Act further required the FAA to maintain in the PRD “summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.”<sup>4</sup> The FAA is required to retain these records until the individual is deceased.<sup>5</sup> The FAA, therefore, determined that continuing its expunction policy was inconsistent with the Act and proceeded to implement the PRD through rulemaking.<sup>6</sup>

On June 10, 2021, the FAA published the final rule for the PRD in the *Federal Register*.<sup>7</sup> As stated in the final rule preamble, the Act “requires the FAA to maintain records in the PRD for the life of the pilot and does not provide the FAA with discretion to expunge records outside of that timeframe.”<sup>8</sup> However, records without a finding of violation are not included in the PRD.<sup>9</sup> When the FAA suspended the expunction policy in 2011, it stated it would determine the full effect of the PRD on the expunction policy and amend the policy accordingly.<sup>10</sup> The FAA has therefore reviewed all types of legal enforcement actions it issues to determine which records the FAA may expunge consistent with the Act and the PRD final rule.

Under 49 U.S.C. 46101(b), the Administrator must refer a complaint involving an apparent violation of a statute or regulation the FAA administers by a member of the U.S. Armed Forces while performing official duties to the secretary of the department concerned for action. The FAA calls these “military referrals.” In addition, the FAA refers an apparent violation of a

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<sup>2</sup> See FAA Policy Statement on Expungement of Certain Enforcement Actions, 76 FR 7893 (Feb. 11, 2011).

<sup>3</sup> Pub. L. 111–216, 124 Stat. 2348 (2010).

<sup>4</sup> 49 U.S.C. 44703(i)(2)(A)(iii).

<sup>5</sup> 49 U.S.C. 44703(i)(5).

<sup>6</sup> 76 FR 7894.

<sup>7</sup> 86 FR 31006. The PRD notice of proposed rulemaking (“NPRM”) is at 85 FR 17660 (Mar. 30, 2020).

<sup>8</sup> 86 FR 31017. Consistent with the Act’s requirement, the FAA will expunge records when a pilot reaches ninety-nine years of age or upon receiving a notification of death. *Id.*; see also 14 CFR 111.40.

<sup>9</sup> See 49 U.S.C. 44703(i)(2)(A)(iii).

<sup>10</sup> 76 FR 7894.

statute or regulation it administers by an individual while exercising a foreign certificate or license (or other approval or authorization) to the appropriate foreign aviation authority for action. The FAA calls these “foreign referrals.” The FAA does not make a finding of violation as part of the military or foreign referral process. The FAA also may issue compromise orders, which involve no finding of violation, in settlement of civil penalty assessment actions and may compromise civil penalties of amounts greater than \$50,000 against individuals without a finding of violation.<sup>11</sup>

## **POLICY STATEMENT**

The FAA will begin expunging records of military and foreign referrals two years after the FAA closes those actions in the Enforcement Information System (“EIS”).<sup>12</sup> The FAA will close records of military and foreign referrals in EIS after (1) the FAA receives a response stating the action taken; or (2) 180 days from the date of the referral, whichever comes first. A two-year period before expunging military and foreign referrals comports with Privacy Act requirements that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory purpose of an agency.<sup>13</sup> The FAA will also expunge records of civil penalty actions against individuals settled with no finding of violation from EIS. Specifically, the FAA will expunge no-finding civil penalty actions five years after the date an individual subject to the civil penalty action or his or her representative: (1) pays the civil penalty; or (2) provides a promissory note for payment of the civil penalty to the FAA. If, at the time a record of a civil penalty action is due to be expunged, a subsequent enforcement action against the individual has been opened, the first civil penalty action record will be expunged if

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<sup>11</sup> See 14 CFR 13.16(n)(2) & 13.18(i)(2); FAA Order 2150.3C, ch. 8, para. 20.f.(2). The provision in § 13.16(n) is not used in hazmat cases as a matter of policy. FAA Order 2150.3C, ch. 8, para. 19.g.(2).

<sup>12</sup> If conduct underlying the referral also gives rise to a legal enforcement action with a finding of violation, the record of that separate action will be maintained in accordance with 49 U.S.C. 44703(i)(2)(A)(iii) and 14 CFR part 111. See, e.g., FAA Order 2150.3C, ch. 8, para. 29.b. (FAA is authorized to take legal enforcement action against any foreign person who violates U.S. statutes or regulations and may do so in the exercise of prosecutorial discretion); ch. 9, para. 10 (FAA may take action against a member of the U.S. Armed Forces if circumstances of the military referral demonstrate or raise a question as to a lack of qualification to hold an FAA-issued certificate).

<sup>13</sup> 5 U.S.C. 552a(e)(1).

and when the subsequent enforcement action is expunged. This is consistent with the 1991 FAA expunction policy. If an individual who owes a civil penalty cannot be located, the FAA will maintain the record of the civil penalty action indefinitely unless or until the individual is located and the criteria in this policy statement for expunging the civil penalty action are satisfied. If a civil penalty is deemed “uncollectable,” the record will not be expunged until the civil penalty is satisfied.

The FAA will apply this expunction policy both prospectively and retrospectively, allowing for the expunction of EIS records of past actions that meet the criteria in this policy statement.

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